UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWIN RAMOS, on behalf of himself, individually, and on behalf of all others similarly-situated,

Plaintiff,

-against-

PARKCHESTER PRESERVATION MANAGEMENT LLC and PARKCHESTER DEPARTMENT OF PUBLIC SAFETY LLC d/b/a PARKCHESTER DPS LLC,

Defendants.

COMPLAINT

Docket No.:

Jury Trial Demanded

Edwin Ramos ("Plaintiff"), on behalf of himself, individually, and on behalf of all others similarly-situated, (collectively as "FLSA Plaintiffs" and/or "Rule 23 Plaintiffs"), by and through his attorneys, BORRELLI & ASSOCIATES, P.L.L.C., as and for his Complaint against PARKCHESTER PRESERVATION MANAGEMENT LLC ("Management") and PARKCHESTER DEPARTMENT OF PUBLIC SAFETY LLC d/b/a PARKCHESTER DPS LLC ("DPS"), (collectively, where appropriate, as "Defendants" or "Parkchester"), alleges upon knowledge as to himself and his own actions and upon information and belief as to all other matters as follows:

NATURE OF CASE

1. This is a civil action for damages and equitable relief based upon violations that the Defendants committed of Plaintiff's rights guaranteed to him by: (i) the overtime provisions of the Fair Labor Standards Acts ("FLSA"), 29 U.S.C. § 207(a); (ii) the overtime provisions of the New York Labor Law ("NYLL"), NYLL § 160; N.Y. Comp. Codes R. & Regs. ("NYCRR") tit. 12, § 146-1.4; (iii) the NYLL's requirement that employers furnish employees with wage

statements containing specific categories of accurate information on each payday, NYLL § 195(3); and (iv) any other claim(s) that can be inferred from the facts set forth herein.

2. Defendants are two privately-owned entities that operate as a single business enterprise and that together provide public safety and law enforcement services throughout the Parkchester Community, a privately owned area comprised of at least 172 buildings and multiple commercial establishments, located in the Bronx, New York. Plaintiff worked for Defendants from approximately 2008 to June 22, 2016, as a public safety peace officer. In or about June 2009, Defendants promoted Plaintiff to the rank of sergeant, where he remained until his termination on June 22, 2016.

3. As described below, throughout his employment, and as is relevant herein, for the six-year period pre-dating the filing of this Complaint, Defendants willfully failed to pay Plaintiff, an hourly employee, all of the wages lawfully due to him under the FLSA and the NYLL. Specifically, for the entirety of his employment, the Defendants required Plaintiff to routinely work, and Plaintiff did in fact work, in excess of forty hours each week or virtually each week by requiring him to either report to work thirty minutes earlier or stay thirty minutes later than the scheduled end of his shift to compile reports and charts. Defendants failed to pay Plaintiff at the statutorily-required overtime rate for this time, and instead granted Plaintiff fifteen workdays in compensatory time ("comp time"), meant to compensate Plaintiff for all pre-shift/post-shift charting hours, regardless of the actual amount of hours that he spent charting each week. Defendants also required the Plaintiff to attend, and Plaintiff did in fact attend, recurring monthly meetings for all officers with the rank of sergeant or higher. Defendants failed to pay Plaintiff at the statutorily-required overtime rate of one and one-half times his straight rate for Plaintiff's time attending the mandatory monthly meetings outside of his regularly scheduled

work hours, and instead improperly compensated Plaintiff in comp time at his straight time rate. Defendants also failed to provide Plaintiff with accurate wage statements on each payday as the NYLL requires, as the statements that Defendants provided to Plaintiff did not reflect all of his hours worked per week.

4. Defendants paid and treated all of their hourly sergeants, lieutenants, and captains working at Parkchester in the same manner.

5. Plaintiff brings this lawsuit against Defendants pursuant to the collective action provisions of the FLSA, 29 U.S.C. § 216(b), on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable FLSA limitations period who suffered damages as a result of the Defendants' willful violations of the FLSA.

6. Plaintiff also brings this lawsuit as a class action pursuant to Federal Rule of Civil Procedure ("FRCP") 23, on behalf of himself, individually, and on behalf of all other persons similarly-situated during the applicable NYLL limitations period who suffered damages as a result of the Defendants' violations of the NYLL and the supporting New York State Department of Labor regulations.

JURISDICTION AND VENUE

7. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, as this action arises under 29 U.S.C. § 201, *et seq*. The supplemental jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1367 over all claims arising under New York law.

8. Venue is appropriate in this court pursuant to 28 U.S.C. § 1391(b)(1), as one or more of the Defendants reside within this judicial district, and pursuant to 28 U.S.C. § 1391(b)(2), as all actions or omissions giving rise to the claims for relief occurred within this judicial district.

PARTIES

9. At all relevant times herein, Plaintiff worked for Defendants in the Bronx, New York, and was an "employee" entitled to protection as defined by the FLSA, NYLL, and NYCRR,

10. At all relevant times herein, Defendant Management was and is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 2000 East Tremont Avenue, Bronx, New York 10462, and that is registered with the New York Department of State to receive service at that same address.

11. At all relevant times herein, Defendant DPS was and is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 2000 East Tremont Avenue, Bronx, New York 10462, and that is registered with the New York Department of State to receive service c/o Wold Haldenstein Adler Freeman & Herz LLP at 270 Madison Avenue, New York, New York 10016.

12. At all relevant times, Defendant Management and Defendant DPS had and have substantially identical, if not completely identical, management, business locations, equipment, employment policies, customers, and/or ownership. They intermingled and intermingle financial books and records, jointly operated and operate the private security force, and shared and share managerial employees. As a result of the foregoing, a continuity of operations and/or ownership between Management and DPS existed and exists.

13. At all relevant times herein, Defendants were and are "employers" within the meaning of the FLSA and NYLL. Additionally, the Defendants' qualifying annual business exceeded and exceeds $500,000, and the Defendants are engaged in interstate commerce within the meaning of the FLSA as they, on a daily basis, use goods, equipment, and other materials in

the course of their business, such as computers, weapons, communication devices, uniforms, and supplies, much of which originated in states other than New York. Additionally, Defendants conduct business across state lines by advertising and attracting residents and employees from outside of New York. All of Defendants' employees, including Plaintiff and FLSA Plaintiffs, are required, on a near daily basis, to use the internet to compile incident reports and/or search public records to communicate and coordinate policing efforts, and patrol public roads to complete their duties. The combination of these factors subjects Defendants to the overtime requirements of the FLSA as an enterprise.

COLLECTIVE ACTION ALLEGATIONS

14. Plaintiff seeks to bring this suit to recover from Defendants unpaid overtime compensation and liquidated damages pursuant to the applicable provisions of the FLSA, 29 U.S.C. § 216(b), individually, on his own behalf, as well as on behalf of those in the following collective:

> Current and former hourly employees of Parkchester who, during the applicable FLSA limitations period, performed any work for Defendants in the position of public safety peace officer with the rank of sergeant or higher, who consent to file a claim to recover damages for overtime compensation that is legally due to them ("FLSA Plaintiffs").

15. Defendants treated Plaintiff and all FLSA Plaintiffs similarly in that Plaintiff and all FLSA Plaintiffs: (1) performed similar tasks, as described in the "Background Facts" section below; (2) were subject to the same laws and regulations; (3) were paid in the same or similar manner; (4) were required to work in excess of forty hours in a workweek; and (5) were not paid the required one and one-half times their respective regular rates of pay for all hours worked per workweek in excess of forty.

16. At all relevant times, Defendants are and have been aware of the requirements to pay Plaintiffs and all FLSA Plaintiffs at an amount equal to the rate of one and one-half times their respective regular rates of pay for all hours worked each workweek above forty, yet they purposefully and willfully chose and choose not to do so.

17. Thus, all FLSA Plaintiffs are victims of Defendants' pervasive practice of willfully refusing to pay their employees overtime compensation for all hours worked per workweek above forty in violation of the FLSA.

RULE 23 CLASS ALLEGATIONS

18. In addition, Plaintiff seeks to maintain this action as a class action pursuant to FRCP 23(b)(3), individually, on his own behalf, as well as on behalf of those who are similarly situated who, during the applicable limitations period, Defendants subjected to violations of the NYLL and the NYCRR.

19. Under FRCP 23(b)(3), Plaintiff must plead that:

a. The class is so numerous that joinder is impracticable;

b. There are questions of law or fact common to the class that predominate over any individual questions of law or fact;

c. Claims or defenses of the representative are typical of the class;

d. The representative will fairly and adequately protect the class; and

e. A class action is superior to other methods of adjudication.

20. Plaintiff seeks certification of the following FRCP 23 class:

> Current and former hourly employees of Parkchester who, during the applicable statutory period, performed any work for Defendants within the State of New York in the position of public safety peace officer with the rank of sergeant or higher, who: (1) did not receive compensation from Defendants at the legally-required overtime rate of pay for each hour worked over forty

hours per week; and/or (2) were not provided with accurate wage statements on each payday pursuant to NYLL § 195(3) ("Rule 23 Plaintiffs").

Numerosity

21. During the previous six years Defendants have, in total, employed at least forty employees that are putative members of this class.

Common Questions of Law and/or Fact

22. There are questions of law and fact common to each and every Rule 23 Plaintiff that predominate over any questions solely affecting individual members of the FRCP 23 class, including but not limited to the following: (1) the duties that Defendants required and require each Rule 23 Plaintiff to perform; (2) the manner of compensating each Rule 23 Plaintiff; (3) whether Rule 23 Plaintiffs worked and work in excess of forty hours per week; (4) whether Defendants failed and fail to pay Rule 23 Plaintiffs proper overtime compensation for all hours worked in excess of forty hours in a workweek; (5) whether Defendants furnished and furnish Rule 23 Plaintiffs with accurate wage statements on each payday containing the information that NYLL § 195(3) requires; (6) whether Defendants kept and maintained accurate records of hours that the Rule 23 Plaintiffs worked; (7) whether Defendants kept and maintained records with respect to the compensation that they paid to the Rule 23 Plaintiffs for each hour worked; (8) whether Defendants have any affirmative defenses to any of the Rule 23 Plaintiffs' claims; (9) whether the Defendants' actions with respect to the Rule 23 Plaintiffs were in violation of the NYLL and supporting regulations; and (10) if so, what constitutes the proper measure of damages.

Typicality of Claims and/or Defenses

23. As described in the "Background Facts" section below, Defendants employed and/or employ Plaintiff and Rule 23 Plaintiffs within the meaning of the NYLL. Plaintiff's claims are typical of the claims of the Rule 23 Plaintiffs whom they seek to represent, as the Rule 23 Plaintiffs work and/or have worked for Defendants as hourly employees, and Defendants failed to pay them overtime pay for all hours worked in a workweek over forty, or furnish them with proper wage statements on each payday. Plaintiff and the Rule 23 Plaintiffs enjoy the same statutory rights under the NYLL to receive overtime wages for all hours worked over forty hours per week, and to be furnished with accurate wage statements on each payday. Plaintiff and the Rule 23 Plaintiffs have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL and supporting regulations. Plaintiff and the Rule 23 Plaintiffs all have suffered injury, including lack of compensation or under-compensation, due to Defendants' common policies, practices, and patterns of conduct. Thus, Plaintiff's claims and/or Defendants' defenses to those claims are typical of the Rule 23 Plaintiffs' claims and/or Defendants' defenses to those claims.

Adequacy

24. Plaintiff, as described below, worked the same or similar hours as the Rule 23 Plaintiffs throughout her employment with Defendants. Defendants did not pay Plaintiff overtime for all hours worked over forty hours in a week, and did not furnish Plaintiff with accurate wage statements on each payday, which is substantially similar to how Defendants paid and treated the Rule 23 Plaintiffs. Plaintiff fully anticipates providing discovery responses and testifying under oath as to all of the matters raised in this Complaint and that will be raised in

Defendants' Answer. Thus, Plaintiff would properly and adequately represent the current and former employees whom Defendants have subjected to the treatment alleged herein.

Superiority

25. Plaintiff has no, or very few, material facts relating to the Rule 23 Plaintiffs' claims that are atypical of those of the putative class. Indeed, at all relevant times herein, Defendants treated Plaintiff identically, or at the very least, substantially similarly, to the Rule 23 Plaintiffs.

26. Any lawsuit brought by an employee of Defendants would be identical to a suit brought by any other employee for the same violations. Thus, separate litigation would risk inconsistent results.

27. Accordingly, this means of protecting the Rule 23 Plaintiffs' rights is superior to any other method, and this action is properly maintainable as a class action under FRCP 23(b)(3).

28. Additionally, Plaintiff's counsel has substantial experience in this field of law.

BACKGROUND FACTS

29. Defendant Management is a privately owned residential community located in the Bronx, New York, comprised of at least 172 residential buildings and commercial spaces ("Parkchester complex").

30. Defendant Management owns and operates Defendant DPS, which is the public safety and security agency that provides round-the-clock security and surveillance coverage throughout the Parkchester complex.

31. At all relevant times, Defendant DPS was listed as the employer on materials that Defendants issued to their employees working for Parkchester, such as termination letters and the inaccurate wage statements that Defendants issued and issue to their employees on each payday.

32. In 2008, Defendants hired Plaintiff as a public safety peace officer to work in the Parkchester complex. Shortly after, in 2009, Defendants promoted Plaintiff to the rank of sergeant, where he remained until his termination on June 22, 2016.

33. As a public safety peace officer, Plaintiff was responsible for patrolling the Parkchester complex, making arrests, issuing citations, and enforcing the New York State Penal Law with the same weight and authority as the New York City Police Department.

34. As a sergeant, Plaintiff's primary duties consisted of duties similar to that of a public safety peace officer, with the addition of overseeing at least ten officers, compiling daily reports, as well as attending monthly supervisory meetings for officers with ranks of sergeant or above.

35. Regardless of whether Plaintiff was working as a safety peace officer or sergeant, Defendants paid him on an hourly basis.

36. Defendants, both privately owned and operated entities, had a policy and practice of paying officers who held the rank of sergeant or above in comp time for hours worked over forty instead of the requisite overtime premium.

37. Throughout his employment, Defendants usually required Plaintiff to work, and Plaintiff did work, between forty-two and one-half and forty-six hours per week.

38. From the time of his promotion to sergeant in 2009 - - and as is relevant to this action, for the six-year period pre-dating the filing of this Complaint - - until his termination on

June 22, 2016, Defendants agreed to pay Plaintiff a wage of $35.92 per hour and an overtime rate of $53.88 per hour.

39. Defendants paid Plaintiff every week by check.

40. Plaintiff was scheduled to work five days a week, from midnight to 8:00 a.m. each shift.

41. Throughout his employment, Defendants required Plaintiff, and all officers with the rank of sergeant or above, including all lieutenants and captains, to either report to work thirty minutes before the scheduled shift start time or stay thirty minutes after the scheduled shift end time to compile reports and charts. Plaintiff spent at least two and one-half hours each week compiling reports and charts. However, even though it was part of his job duties to compile the daily reports and charts, Defendants refused to pay Plaintiff for any time that he spent compiling them, all of which was time spent in excess of forty hours per week, at the statutorily required overtime rate of pay. Instead, Defendants paid Plaintiff with fifteen work days of comp time at the beginning of each year, which was meant to cover all time spent compiling reports and charts, regardless of the actual amount of hours that Plaintiff spent doing so throughout the year.

42. By way of example only, during the week of March 28 through April 3, 2016, Defendants required Plaintiff to work, and Plaintiff did work, five days, from 11:30 p.m. to 8:00 a.m. each day. Thus, adding up the hours for this one workweek, Plaintiff worked forty-two hours and thirty minutes, of which two hours and thirty minutes he spent compiling the daily reports and charts that Defendants required him to complete. Nonetheless, Defendants paid Plaintiff for his first forty hours worked only.

43. Defendants also required Plaintiff, and all officers with the rank of sergeant or above, to attend a mandatory monthly meeting, which usually lasted approximately two to three

hours and was always scheduled outside of Plaintiff's regularly scheduled shifts. However, even though it was part of his job duties to attend the monthly meetings, Defendants refused to pay Plaintiff for any time that he spent in the meetings, all of which was time spent in excess of forty hours per week, at the statutorily required overtime rate. Instead, Defendants paid Plaintiff with comp time at his straight hourly rate.

44. By way of example only, in or about March 2016, Defendants required Plaintiff to attend, and Plaintiff did attend, the mandatory monthly meeting, which lasted approximately two to three hours, and was scheduled from approximately 2:00 p.m. to 5:00 p.m. During the same week, Defendants required Plaintiff to work, and Plaintiff did work, his regular scheduled shifts of at least forty-two and one-half hours. Nonetheless, Defendants compensated Plaintiffs in comp time at the straight rate for each hour spent in the meeting.

45. On each occasion when they paid Plaintiff, Defendants intentionally failed to provide Plaintiff with a wage statement that accurately listed, *inter alia*, his actual hours worked for that week, as the paystubs with which Defendants furnished Plaintiff did not include any of his time spent compiling the reports and charts or attending mandatory meetings.

46. Defendants treated Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs in the manner described herein.

47. Defendants acted in the manner described herein so as to maximize their profits while minimizing their labor costs and overhead.

48. Each hour that Plaintiff worked was for Defendants' benefit.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

Unpaid Overtime Under the FLSA

49. Plaintiff and FLSA Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

50. 29 U.S.C. § 207(a) requires employers to compensate their employees at a rate not less than one and one-half times their regular rate of pay for all hours worked exceeding forty in a workweek.

51. As described above, Defendants are employers within the meaning of the FLSA while Plaintiff and FLSA Plaintiffs are employees within the meaning of the FLSA.

52. Plaintiff and FLSA Plaintiffs worked in excess of forty hours per week, yet Defendants failed to compensate them in accordance with the FLSA's overtime provisions.

53. Defendants willfully violated the FLSA.

54. Plaintiff and FLSA Plaintiffs are entitled to overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

55. Plaintiff and FLSA Plaintiffs are also entitled to liquidated damages and attorneys' fees for Defendants' violation of the FLSA's overtime provisions.

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS
Unpaid Overtime Under the NYLL and the NYCRR

56. Plaintiff and Rule 23 Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

57. NYLL § 160 and 12 NYCRR § 146-1.4 require employers to compensate their employees at a rate not less than one and one-half times their regular rates of pay for any hours worked exceeding forty in a workweek.

58. Defendants are employers within the meaning of the NYLL and the NYCRR, while Plaintiff and Rule 23 Plaintiffs are employees within the meaning of the NYLL and the NYCRR.

59. Plaintiff and Rule 23 Plaintiffs worked in excess of forty hours in a workweek, yet Defendants failed to compensate them in accordance with the NYLL's and the NYCRR's overtime provisions.

60. Plaintiff and Rule 23 Plaintiffs are entitled to their overtime pay for all hours worked per week in excess of forty at the rate of one and one-half times their respective regular rates of pay.

61. Plaintiff and Rule 23 Plaintiffs are also entitled to liquidated damages, interest, and attorneys' fees for Defendants' violations of the NYLL's and NYCRR's overtime provisions.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS
Failure to Furnish Proper Wage Statements in Violation of the NYLL

62. Plaintiff and Rule 23 Plaintiffs repeat, reiterate, and re-allege each and every allegation set forth above with the same force and effect as if more fully set forth herein.

63. NYLL § 195(3) requires that employers furnish employees with wage statements containing accurate, specifically enumerated criteria on each occasion when the employer pays wages to the employee.

64. As described above, the Defendants, on each payday, failed to furnish Plaintiff and Rule 23 Plaintiffs with wage statements that accurately contained the criteria required under the NYLL.

65. Prior to February 27, 2015, pursuant to NYLL § 198(1-d), the Defendants are liable to Plaintiff and Rule 23 Plaintiffs in the amount of $100 for each workweek after the violation occurred, up to a statutory cap of $2,500.

66. On or after February 27, 2015, pursuant to NYLL § 198(1-d), Defendants are liable to Plaintiff and Rule 23 Plaintiffs in the amount of $250 for each workday after the violation occurred, up to a statutory cap of $5,000.

DEMAND FOR A JURY TRIAL

67. Pursuant to FRCP 38(b), Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs demand judgment against Defendants as follows:

a. A judgment declaring that the practices complained of herein are unlawful and in violation of the aforementioned United States and New York State laws;

b. Preliminary and permanent injunctions against Defendants and their officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

c. An order restraining Defendants from any retaliation against Plaintiff, FLSA Plaintiffs, and/or Rule 23 Plaintiffs, for participation in any form in this litigation;

d. Designation of this action as an FLSA collective action on behalf of Plaintiff and FLSA Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to the FLSA Plaintiffs, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

e. Certification of the claims brought in this case under the NYLL and NYCRR as a class action pursuant to FRCP 23;

f. All damages that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs have sustained as a result of the Defendants' conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs would have received but for the Defendants' unlawful payment practices;

g. Liquidated damages and any other statutory penalties as recoverable under the FLSA and NYLL;

h. Awarding Plaintiff, FLSA Plaintiffs, and Rule 23 Plaintiffs their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs and expenses, and an award of a service payment to Plaintiff;

i. Designation of Plaintiff and his counsel as class/collective action representatives under the FRCP and the FLSA;

j. Pre-judgment and post-judgment interest, as provided by law; and

k. Granting other and further relief as this Court finds necessary and proper.

Dated: Great Neck, New York
November 7, 2016

Respectfully submitted,

BORRELLI & ASSOCIATES, P.L.L.C.
Attorneys for Plaintiff
1010 Northern Boulevard, Suite 328
Great Neck, New York 11021
Tel. (516) 248-5550
Fax. (516) 248-6027

By: ______________________________

DONG PHUONG V. NGUYEN (DN 7326)
ALEXANDER T. COLEMAN (AC 1717)
MICHAEL J. BORRELLI (MB 8533)